

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

FRIDAY, THE THIRTIETH DAY OF DECEMBER
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE SRI JUSTICE T.VINOD KUMAR

I.A.Nos.2 and 3 of 2021

In/and

WRIT PETITION NO: 22515 OF 2020

WRIT PETITION NO: 22515 OF 2020:

Between:

G. Bakkaiah, S/o. G. Ramachandram, Aged about 57 years, Occ Assistant Manager, Union Bank of India, Vikas Nagar Branch, R/o. Flat No.504, Venkateswara Residency, Ramnagargundu, Vidyanagar, Hyderabad - 500044,

...PETITIONER

AND

1. State of Telangana, Rep. by its Principal Secretary, Department of Cooperation, Secretariat, Hyderabad.
2. The Joint Secretary (Cooperation) and Central Registrar, Govt. of India, Department of Agriculture, Cooperation and Farmers Welfare, Krishi Bhavan, New Delhi - 110001.
3. The Commissioner of Cooperation, Govt. of Telangana, Gruha Kalpa, Exhibition Grounds Road, Hyderabad.
4. The Deputy Registrar of Cooperative Societies, Govt. of Telangana, Mithila Complex, 3rd Floor, H.No.4-4-296/297, Bank Street, Hyderabad.
5. The Andhra Bank Employees Cooperative Bank Ltd, Mithila Complex, 3rd Floor, H.No.4-4-296/297, Bank Street, Hyderabad.
6. Samad Khan S/o Yousuf Kahan, Aged About 40 years Occ.House Wife R/o Flat No.202,2 Floor Gharonda Pancham Apartment Beside Indian Overseas Bank Padmaranagar Secunderbad T.S 500025.
7. A.Jagannath S/o Late A.Kashinath, Aged About 57 years R/o Flat No.107 Sandhya Block Medha Rejoice Apartment Attapur Hyderabad, T.S 500025.
8. Srinivasa Rao kale S/o Rama Rao, Aged About 54 years R/o D.No.6-72 Veenayaka Nagar Chetaparru Road Venkatapuram Panchayat Eluru A.P.534001.

(Respondents 6 to 8 Impleaded as per C.O. dt.16/03/2021 in IA. No.1/2021)

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...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ, Order or Orders, Direction or Directions to declare the action of the 4th respondent in proceeding to conduct elections to the Board of Directors of the 5th respondent Bank under the provisions of Multi-State Cooperative Societies Act, 2002, by issuing Election Notice dated 25.11.2020, as illegal, arbitrary and unconstitutional and to set aside the said Election Notice and to direct the 2nd respondent to appoint Person-in-Charge to run the 5th respondent till the bye-laws are amended by permitting the employees of Union Bank of India to become members of the 5th respondent

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of the elections to the 5th respondent Bank going to be conducted by the 4th respondent by way of Election Notice dated 25.11.2020. pending disposal of the Writ Petition

IA NO: 2 OF 2021

Between:

1. Samad Khan S/o Yousuf Kahan, Aged About 40 years Occ.House Wife R/o Flat No.202,2 Floor Gharonda Pancham Apartment Beside Indian Overseas Bank Padmaranagar Secunderbad T.S 500025.
2. A Jagannath S/o Late A.Kashinath, Aged About 57 years R/o Flat No.107 Sandhya Block Medha Rejoice Apartment Attapur Hyderabad. T.S 500025.
3. Srinivasa Rao kale S/o Rama Rao, Aged About 54 years R/o D.No.6-72 Veenayaka Nagar Chetaparru Road Venkatapuram Panchayat Eluru A.P.534001.

...PETITIONERS/RESPONDENTS No.6, 7&8 in WP

AND

1. G. Bakkaiah, S/o. G. Ramachandram, Aged about 57 years, Occ Assistant Manager, Union Bank of India, Vikas Nagar Branch, R/o. Flat No.504, Venkateswara Residency, Ramnagargundu, Vidyanagar, Hyderabad - 500044.

...RESPONDENT No.1/PETITIONER

2. State of Telangana, Rep. by its Principal Secretary, Department of Cooperation, Secretariat, Hyderabad.
3. The Joint Secretary (Cooperation) and Central Registrar, Govt. of India, Department of Agriculture, Cooperation and Farmers Welfare, Krishi Bhavan, New Delhi - 110001.

4. The Commissioner of Cooperation, Govt. of Telangana, Gruha Kalpa, Exhibition Grounds Road, Hyderabad.
5. The Deputy Registrar of Cooperative Societies, Govt. of Telangana, Mithila Complex, 3rd Floor, H.No.4-4-296/297, Bank Street, Hyderabad.
6. The Andhra Bank Employees Cooperative Bank Ltd, Rep. by its Chief manager & Officiating Secretary, Anusha Thota Bank Office at: Mithila Complex, 3rd Floor, H.No.4-4-296/297, Bank Street, Hyderabad.

...RESPONDENTS/RESPONDENTS No.1 to 5

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to vacate the interim Order dated 11/12/2020 in IA No 1 of 2020 in WP No 22515 of 2020

IA NO: 3 OF 2021

Between:

1. The Andhra Bank Employees Cooperative Bank Ltd, Rep. by its Chief manager & Officiating Secretary, Anusha Thota Bank Office at: Mithila Complex, 3rd Floor, H.No.4-4-296/297, Bank Street, Hyderabad.

...PETITIONER/RESPONDENT No.5 in WP

AND

1. G. Bakkaiah, S/o. G. Ramachandram, Aged about 57 years, Occ Assistant Manager, Union Bank of India, Vikas Nagar Branch, R/o. Flat No.504, Venkateswara Residency, Ramnagargundu, Vidyanagar, Hyderabad - 500044.

...RESPONDENT No.1/PETITIONER

2. State of Telangana, Rep. by its Principal Secretary, Department of Cooperation, Secretariat, Hyderabad.
3. The Joint Secretary (Cooperation) and Central Registrar, Govt. of India, Department of Agriculture, Cooperation and Farmers Welfare, Krishi Bhavan, New Delhi - 110001.
4. The Commissioner of Cooperation, Govt. of Telangana, Gruha Kalpa, Exhibition Grounds Road, Hyderabad.
5. The Deputy Registrar of Cooperative Societies, Govt. of Telangana, Mithila Complex, 3rd Floor, H.No.4-4-296/297, Bank Street, Hyderabad.
6. Samad Khan S/o Yousuf Kahan, Aged About 40 years Occ. House Wife R/o Flat No.202, 2 Floor Gharonda Pancharam Apartment Beside Indian Overseas Bank Padmaranagar Secunderbad T.S 500025.
7. A.Jagannath S/o Late A Kashinath, Aged About 57 years R/o Flat No.107 Sandhya Block Medha Rejoice Apartment Attapur Hyderabad. T.S 500025.

- 4
8. Srinivasa Rao kale S/o Rama Rao, Aged About 54 years R/o D.No.6-72
Veenayaka Nagar Chetaparru Road Venkatapuram Panchayat Eluru
.A.P.534001.

...RESPONDENTS/RESPONDENTS No.1 to 8

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to vacate the interim order dated 11/12/2020 in IA No 1 of 2020 in WP No 22515 of 2020

Counsel for the Petitioner: SRI VEDULA SRINIVAS, SENIOR COUNSEL

Counsel for the Respondent No.1 to 4: GP FOR COOPERATION

Counsel for the Respondent No.5: SRI R.N. HEMENDRANATH REDDY

Counsel for the Respondent No.6 to 8: SRI KEETHI KIRAN KOTA

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE T.VINOD KUMAR

I.A.Nos.2 and 3 of 2021

In/and

WRIT PETITION No.22515 of 2020

ORDER:

The present Writ Petition is filed for issuance of a Writ of Mandamus to declare the action of 4th respondent in proceeding to conduct elections to the Board of Directors of the 5th respondent Bank under the provisions of Multi-State Cooperative Societies Act, 2002 (for short 'the Act') by issuing Election Notice dt.25-11-2020 containing the detailed election schedule, as being illegal, arbitrary and unconstitutional, and to set aside the said Election Notice and to direct the 2nd respondent to appoint Person-in-Charge to run the 5th respondent till the bye-laws are amended by permitting the employees of Union Bank of India to become the members of the 5th respondent.

2. Initially, this Court by order dt.11-12-2020 passed the following interim order:

"Heard learned Senior Counsel Sri Vedula Srinivas appearing for the petitioner and learned counsel Sri Hemendranath Reddy appearing for the 5th respondent.

At request of learned Assistant Solicitor General appearing for respondent No.2, post on 23-12-2020.

Having regard to the issue involved, the Court is of the prima-facie opinion that as of now, the erstwhile employees of Andhra Bank cannot hold a General Body meeting to conduct election to the Board of Directors of 5th respondent. Therefore, the present Election Notice is not in law.

However, as stated by Sri Hemendranath Reddy, that all the arrangements are made to hold elections on 13.12.2020, the Court is not inclined to stall the election process at this stage.

Having regard to the above, the election may go on as scheduled, but counting and declaration of result shall not be undertaken until further orders."

3. Subsequent to filing of the Writ Petition, respondent Nos.6 to 8 were impleaded as respondents in the Writ Petition.

4. Vacate Petitions along with their respective counter affidavits were filed by Respondents 6 to 8 vide I.A.No. 2 of 2022 and I.A.No.3 of 2021 by the 5th respondent seeking for vacating the interim order dt.11-12-2020. Counter affidavits were also filed on behalf of Respondents No. 1, 3 & 4.

CONTENTIONS OF PETITIONER:

5. Petitioner contends that he was working with Andhra Bank, a Nationalized Bank, where the employees of Andhra Bank had established the 5th respondent as a Banking establishment by getting it registered under the Act with respondent No.2; and that in terms of Section 5 of the Act, the 2nd respondent is the authorized person to register the Society.

6. It is further contended that the 5th respondent, though is set up as a Banking establishment, ostensibly formed as a Society for the purpose of employees of Andhra Bank to encourage thrift, self-help and cooperation among its members. It was also accepting deposits from members, nominal members and public, which were repayable on demand, thereby carrying on the general business of banking in terms of 'the Act'; and that the bye-laws of the 5th respondent Society specifies its objects and functions, for which the 5th respondent was formed.

7. Petitioner further contends that the bye-laws of the 5th respondent, provides for two types of membership i.e. (1) Members and (2) Nominal members as specified in bye-law Nos.6 and 7

thereof. It is further contended that in terms of bye-law No.6, only an employee of Andhra Bank can become a member of the 5th respondent, while a nominal member as per bye-law No.7 can be any person who resides within the area of operation of the 5th respondent or is gainfully engaged in any occupation in the area and is desirous of availing services of the Bank.

8. Petitioner contends that bye-law No.8 of the bye-laws deals with disqualification of membership and bye-law No.9 deals with resignation/withdrawal of members. It is further contended that bye-law No.10 deals with cessation of membership and contemplates various situations whereby the membership of a member ceases to exist thereunder. One of the circumstance for cessation of membership specified under bye-law No.10, is when a member of the 5th respondent ceases to be in the service of Andhra Bank.

9. Petitioner further contends that the Central Government in consultation with the Reserve Bank of India, under Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, and Section 9 of the Banking Companies (Acquisition

and Transfer of Undertakings) Act, 1980 (40 of 1980) had formulated a Scheme for Amalgamation of Andhra Bank and Corporation Bank with Union Bank of India called as 'Amalgamation of Andhra Bank and Corporation Bank into Union Bank of India Scheme, 2020 (for Short 'Scheme of 2020'); and that the said Scheme would come into force from 01-04-2020.

10. Petitioner further contends that the Government of India had issued a Notification dt.04-03-2020 formulating the terms of the Scheme of 2020. Under the scheme, the undertakings of Andhra Bank being Transferor Bank-1 including all businesses, assets both tangible and intangibles as defined in Clause 4 of the Notification shall vest with the transferee Bank. It is also contended that in terms of sub-clause (13) of Clause 4 thereof, every permanent and regular officer or other permanent and regular employee of the Transferor Banks and Officers and employees on probation, serving in the employment of the Transferor Banks immediately before the commencement of the Scheme of 2020, shall become an Officer or as the case may be, employee of the Transferee Bank.

11. The Petitioner contends that on the scheme becoming effective, all the employees of Andhra Bank ceased to be in the employment of Transferor Bank – 1, and became members of the Transferee Bank i.e., Union Bank of India and that all the members who secured membership with the 5th respondent, thus ceased to be members since their employment with Andhra Bank ceases as specified in sub-clause (5) of bye-law No.10.

12. Petitioner further contends that 5th respondent has a membership of 9500 members, having a board of directors whose term is for a period of 5 years from the date of election as per Bye-law No.33; that the term of the previously elected body expires in August, 2020. It is contended that on account of amalgamation of Andhra Bank with Union Bank of India, as no employees of the Andhra Bank exist in the 5th Respondent society, the 4th respondent cannot undertake the action of issuing Election Notice to conduct elections to the Board of Directors of 5th respondent by fixing the schedule.

13. Petitioner further contends that by virtue of the amalgamation, the 5th respondent would remain a society without members till the

bye-laws are amended, permitting the employees of Union Bank of India to become members of the 5th respondent society; and that on noticing the above situation, he had approached the 2nd respondent on 10-11-2020 bringing to his notice about the fact of no valid members being there in the 5th respondent on account of cessation of their employment with Andhra Bank and sought to place the running of the 5th respondent Society by appointing a Person-in-Charge till the bye-laws are amended.

14. Petitioner further contends that in spite of approaching the 2nd respondent and submitting a representation to the above effect, there has been no response from the 2nd respondent on this aspect, while on the other hand, the 4th respondent is proceeding with conducting elections to the Board of 5th respondent by issuing the impugned Election Notice dt.25-11-2020.

CONTENTIONS OF RESPONDENTS

15. On behalf of respondent Nos.6 to 8, it is contended that the claim of the writ petitioner that membership of the 5th respondent is described in bye-law No.6 and that it is only restricted to

employees of Andhra Bank is deceptive and misleading. It is contended that the 5th respondent was established in the year 1951 and was later converted into a Cooperative Urban Bank by obtaining licence from the Reserve Bank of India in the year 1986 whereby the 5th respondent is categorized as Urban Cooperative Bank under Salary Earners Category and that the 5th respondent is under the control of the Reserve Bank of India and is subjected to yearly inspection by the Reserve Bank of India.

16. It is also contended that 5th respondent has a banking relationship spanning over seven decades with Andhra Bank and it maintains large funds running into crores of rupees as securities, term deposits and also current accounts. Furthermore, Andhra Bank was extending various services such as recovery of monthly thrift deposit, recovery of monthly loan instalments etc. from the salary of the members who were working with it and remitting the same to 5th respondent, which also included recovery of dues owed by its members from their terminal benefits. It is also contended that all the above services provided by Andhra Bank were restricted only to its employees who were members of 5th

respondent, as per bye-law No.6 and would not be applicable to others who became members under bye-law No.7 of the Bye-Laws of the 5th respondent.

17. On behalf of respondent Nos.6 to 8, it is further contended that the Scheme of 2020 formulated by the Government of India, whereby Andhra Bank and Corporation Bank were amalgamated with Union Bank of India, does not amount to cessation of such amalgamated entities in all its form since the assets and liabilities, receivables and payables as specified in Clause 4(1) of the Scheme of 2020 continue to stand in the name of the transferor Bank viz., Andhra Bank, without there being any further requirement of documentation to be executed for vesting the same with the Union Bank of India, and thus, it cannot be said that Andhra Bank ceased to exist for all practical purposes post-amalgamation. It is contended that the petitioner is only taking advantage of the amalgamation (of Andhra Bank under the Scheme of 2020), by falsely claiming that the membership of all the members of the 5th respondent ceases, thereby leaving the 5th respondent without any

members, ignoring the fact that no Society can exist without a member.

18. It is further contended that 5th respondent is a separate body corporate, independent of the existence of Andhra Bank and is registered under the provisions of the Act. The existence or otherwise of 5th respondent would be governed by the bye-laws of the society and its existence is neither dependent nor affected in any manner by the amalgamation of Andhra Bank under the Scheme of 2020.

19. It is further contended that that the interpretation of the Scheme of 2020 sought to be placed by the petitioner leads to absurdity. It is also contended that if the claim of the petitioner is accepted to be correct, even the petitioner ceases to a member of the 5th respondent and has no *locus standi* to maintain the present Writ Petition.

20. It is also contended that the provisions of Section 45(5) of the Act, while specifying the period of elected Board to be a term of five years, permits continuation of existing Body to hold the office till the successors are elected or nominated under the provisions of

the Act or the Rules or bye-laws and assume charge of their office, but does not contemplate placing the management of 5th respondent in the hands of a person-in-charge, as contended by petitioner.

21. The 5th respondent while adopting the contentions advanced by respondent Nos.6 to 8, would further contend that the petitioner herein approached the 5th respondent by submitting a request for issuance of a nomination form pursuant to Election Notice dt.25-11-2020 vide letter dt.03-12-2020. It is also contended that the Petitioner having shown interest to take part in the election process by seeking a nomination form, is precluded from challenging the said Election Notice.

22. The 5th respondent would further contend that bye-law No.33(5) of the 5th respondent also contemplates continuation of the elected members to hold their office beyond the period of five years till their successors are elected and assume office and therefore even if no elections are held, as claimed by the petitioner, the existing body would continue to hold office. The said bye-law is in consonance with Section 45(5) of the Act.

23. The 5th respondent would further contend that upon the amalgamation of Andhra Bank with Union Bank of India under the Scheme of 2020, the transferee Bank treated the 5th respondent as its customer by requesting the 5th respondent to update its Know Your Customer (KYC) details and to provide list of authorized signatories for operating the account maintained with them. The transferee bank also agreed to provide uninterrupted and smooth services as hitherto provided by Andhra Bank, which goes to show that the existence and functioning of 5th respondent is not dependent on the existence of Andhra Bank. That the 5th respondent, being an independent body, is governed by its own bye-laws, and mere amalgamation of Andhra Bank with Union Bank of India under the Scheme of 2020 does not automatically result in the members of 5th respondent ceasing their membership with the 5th respondent.

24. On behalf of respondent Nos.1, 3 and 4 it is contended that Rule 19 of the of the Multi State Cooperative Societies Rules, 2002 prescribes the procedure for conduct of elections; That the 5th respondent at its meeting held on 23-05-2020 resolved to hold

the General Body Meeting and conduct elections as per the Act; and that the Board of Directors in its meeting held on 21-06-2020 had resolved to appoint the 4th respondent as Returning Officer to conduct the elections to constitute the Board of Directors of for a term of 5 years. The 4th Respondent issued election notice by fixing the schedule. It is further contended that since the Central Registrar vide letter dt.14-09-2020 allowed the Multi State Cooperative Banks and Societies to conduct the elections till 31-12-2020 on account of Covid-19 restrictions, the elections were conducted in a conventional way on 13-12-2020.

25. In reply to the above contentions, petitioner contends that the clauses in the bye-laws should be read as they appear on record; and that in terms of provisions of Section 123 of the Act, an Administrator can be appointed to the 5th respondent.

26. Heard Sri Vedula Srinivas, learned Senior Counsel appearing on behalf of the petitioner, learned Government Pleader for Cooperation appearing on behalf of respondent Nos.1, 3 and 4, Sri R.N.Hemendranath, learned Senior Counsel appearing for Sri M.Pratheek Reddy, learned counsel for respondent No.5 and Sri

D.Prakash Reddy, learned Senior Counsel appearing for Mr.Keerthi Kiran Kota, learned counsel appearing for respondent Nos.6 to 8.

27. I have taken note of the respective contentions.

CONSIDERATION BY THE COURT

28. As evident from the Certificate of Registration issued by the 2nd respondent, the 5th respondent is registered under the Act with its own bye-laws governing the conduct of its affairs. As per the certificate issued by the 2nd respondent by incorporating the amendments made to the bye-laws of the 5th respondent, the 5th respondent had its own place of business and registered office.

29. Bye-law No.5 of the 5th Respondent deals with objects and functions and one of its objects is to encourage thrift, self-help and cooperation among members. Similarly, Clause (2) thereof provides for accepting deposits of money from the members, nominal members, and public repayable on demand or otherwise, and withdrawable by cheque, draft or otherwise, for the purpose lending and investment.

30. Bye-law No.6 deals with 'membership' and Bye-law No.6(1) states that 'any confirmed employee of Andhra Bank residing within the area of operation of the Bank shall be admitted as a member subject to the condition that he/she should be competent to contract under Section 11 of the Indian Contract Act, 1872' subject to conditions specified thereunder.

31. It is important to note that bye-law No. 6(1) categorically states that no person can claim admission as a member, as a matter of right and proceeds to delineate various conditions to be satisfied in order to be admitted as a member. One of the condition therein contemplates a situation wherein a person will not be admitted as a member if he has not subscribed to and fully paid for at least one share of the 5th respondent and his/her application has not been duly approved by the Board of Directors. A person also cannot claim membership if he/she is a member of any other Primary Cooperative Bank or Cooperative Credit Society registered under any State Cooperative Society Act or The Multi-State Cooperative Societies Act.

32. Thus, a reading of the conditions stipulated in the bye-law No.6 indicates that not every employee of Andhra Bank automatically becomes a member of 5th respondent and cannot claim to become a member of the 5th respondent as a matter of right, since the same is subject to his/her application being duly accepted by the Board of Directors of the 5th respondent. Though bye-law No.6 mentions heading "1. Members", there is no other heading specified thereunder.

33. Bye-law No.7 deals with nominal members, which specifies admission of nominal members, who reside within the area of operation of 5th respondent or are gainfully engaged in any occupation in the area and desirous of availing the service of the 5th respondent. Thus, as per the bye-laws, the 5th respondent has two categories of members, (i) Persons admitted as members on account of them being employees of Andhra Bank subject to approval by the Board of Directors of the 5th respondent and (ii) other members termed as 'nominal members' who reside in the area of operation of 5th respondent and intending or desirous of availing the service of the 5th respondent.

34. Bye-law No.10 which deals with cessation of membership provides seven circumstances in which a member loses his membership with the 5th respondent, they are enumerated as under:

"10. Cessation of Membership:

Membership will cease in the following circumstances:

- 1) On death*
- 2) On being adjudged as insolvent or legally disabled from continuing as a member*
- 3) On breach of any conditions prescribed under bylaws of the Bank.*
- 4) On withdrawal of total share Capital held by him/her.*
- 5) Ceased to be in the service of Andhra Bank.*
- 6) Expulsion from the Bank.*
- 7) On resignation or withdrawal of membership having been accepted by the Bank."*

It is to be noted that the above bye law does not make any distinction between members admitted under Bye-law No. 6 and 7. Thus, it applies equally to both the category of members mentioned herein above.

35. Further a perusal of the circumstances enumerated under Bye-law No. 10 indicates that cessation of membership would arise on account of the action(s) of an individual member concerning either his personal affairs or that of the society. That is to say (1) prescribes cessation of membership on **death of a member**, (2) deals with a situation when a **member is adjudged as insolvent**,

(3) comes into play when there is a **breach of conditions** prescribed under the bye-laws **at the hands of a member**, (4) is when a **member withdraws** the total share capital **held by him/her** in the 5th respondent, (5) is a circumstance where a **member ceases to be in service of** Andhra Bank, whereas (6) is when a member is **expelled** from the 5th Respondent **on account of his actions**, finally (7) is attracted when a member **resigns or withdraws his/her** membership and the same is accepted by 5th respondent.

36. Thus, in each of the circumstances enumerated under bye-law No. 10 including clauses (5) and (6) which are slightly different in nature, it is clear that the cessation of membership is on account of individual actions of a member and has no connection whatsoever either with affairs or actions of Andhra Bank.

37. Though it is sought to be contended by the petitioner that on account of amalgamation of Andhra Bank with Union Bank of India under Scheme of 2020, the employment of a member of the 5th respondent with Andhra Bank would come to an end, thereby the same would have to be construed as ceased to be in

employment with Andhra Bank, it is to be seen that under the Scheme of 2020, employment of the existing employees of Andhra Bank is not terminated from service on account of amalgamation. On the otherhand they continue to be in service without break or interruption on terms no less favourable than being in employment with Andhra Bank as specified in sub-clause (13) of Clause 4 of the Scheme of 2020. That apart, the Scheme of 2020 nowhere mentions that their employment with the transferor bank would be deemed to have ceased.

38. Sub-clause (2) of Section 4 of Scheme of 2020 specifies that upon commencement of the Scheme, the undertakings of the Transferor Bank shall vest or be deemed to vest or be taken over by the transferee Bank without requiring any act, deed, consent or instruction for transfer of the same.

39. Sub-clause (5) Clause 4 of Scheme, 2020 also specifies that the assets of the transferor Bank i.e., Andhra Bank as in the present case, shall vest or deemed to have been vested in the Transferee Bank without further act or deed done or being required to be done by the Transferor Banks. It also mentions that the Transferee Bank

shall be entitled to exercise all rights and privileges attached to such immovable properties as the transferor Bank was entitled to.

40. Further, a reading of Scheme of 2020 would also show that as per sub-clause (7) of Section 4 thereof, whatever is standing in the name of transferor Bank i.e., Andhra Bank shall be transferred to the transferee Bank. The above situation can be illustrated with reference to an example, to any lease that is held by the transferor bank i.e., Andhra Bank as in the present case, the transferee Bank shall be deemed to have become the lessee in respect of such property and the terms of lease shall bind the transferee.

41. A conjoint reading of various sub-clauses of Clause 4 of Scheme of 2020 would show that the Scheme for amalgamation was formulated without affecting the terms of employment of the employees of the transferor Banks. The Scheme also provided that if any employee is not agreeable to hold his office with the transferee Bank in terms of sub-clause (13) of clause 4 of Scheme of 2020, such an employee shall be deemed to have been superannuated on the date immediately preceding the date of commencement of the Scheme and shall be entitled to all

superannuation benefits from the Transferor Banks as would have been admissible to him but for the amalgamation under the Scheme of 2020.

42. In the above background, if clause (5) of bye-law 10 is to be construed, the same would stand attracted when an employee of Andhra Bank ceases to be employee on account of his superannuation or leaving the job on his own volition or being removed from service by committing an act resulting in termination of service from the Andhra Bank and not by merely agreeing to the transfer of his service to another Bank on account of operation of law i.e., Scheme of 2020 as formulated by the Government of India, on which he has no control. The mere use of the word 'ceased to be in service of Andhra Bank (*Emphasis supplied*)', cannot be construed in a strict sense as being confined only to mean being in the service with Andhra Bank without taking note of the developments taking place in the present day corporate world which could not have been visualized when the bye-laws of the 5th respondent were framed.

43. The issue at hand can also be looked at from another angle which could not have been visualized when the 5th respondent came into existence. In a given situation if there was a change in the name of Andhra Bank without any real change in its constitution, would such a mere change in the nomenclature result in cessation of membership with the 5th Respondent. In answer to the same, if the words "ceased to be in service of Andhra Bank" are constructed strictly as contended by petitioner, it would be apparent that the draftsmen of the Bye-laws would not have intended to give such an interpretation as it would lead to absurdity and disrupt the entire functioning of the 5th respondent. Therefore, the Petitioner's contention that the words "ceased to be in service of Andhra Bank" are to be construed strictly, cannot be accepted.

44. Further, it is settled position of law that if a literal interpretation gives rise to an anomaly or absurdity, the same should be avoided and purposive interpretation should be given effect to, as held in the case of **Deewan Singh and Others Vs. Rajendra Pd. Ardevi and others**¹, wherein it was held that –

¹ (2007) 10 SCC 528

27. Although golden rule of interpretation, viz., literal rule should be given effect to, if it is to be held that the Devasthan Commissioner appointed under Section 7 of the Act would be an agency of the State, the same would lead to an absurdity or anomaly. **It is a well-known principle of law that where literal interpretation shall give rise to an anomaly or absurdity, the same should be avoided.** [See *Ashok Lanka v. Rishi Dixit* MANU/SC/0389/2005 : AIR2005SC2821 and *M.P. Gopalakrishnan Nair v. State of Kerala* MANU/SC/0305/2005 : AIR2005SC2053]

45. Further, in **K.Gopalakrishna Reddy Vs. Revenue Divisional Officer and others²**, a Division Bench of this Court held 'a construction should be avoided which renders the statute unfair or unjust in its operation, where the language of the statute does not compel such a result'. The Court further held 'the fact that unjust results follow the literal application of the language of a statute justifies a search of the statute for further indications of legislative intent.'

46. In the said decision, the Court further held as under:

"12. The prepositional position deducible from the foregoing may now be summed up thus:

(1) xxx xxxxx xxxxx

² 1980 ALT 329

(2) It is to be presumed that the rule-making authority intended the law not to work an injustice. It is the duty of the Courts to render such an interpretation of the laws as will best subserve, promote and effectuate the ends of justice. Technicalities should not be permitted to override justice. It is not to be presumed that the rule-making authority contemplated a violation of rules of natural justice. On the other hand, it should be presumed that the law-making authorities intend to act in accordance with the principles of natural justice. An interpretation that results in inequity, injustice, absurdity and anomaly should be avoided.

XXXX XXX XXXXXXXX XXXXXXXX"

47. If the above position of law as enunciated by this Court way back in the year 1980s kept in mind, the interpretation that is sought to be placed before this Court on bye-law No.10(5), on account of Scheme of 2020, in the view of this Court leads to absurdity and anomaly, which is to be avoided.

48. Further, as noted hereinabove, none of the other circumstances specified in bye-law No.10 have any connection with the acts of a third party like a scheme being framed by the Central Govt under which the employment of an individual is being transferred from one bank to another bank. Thus, clause (5) of bye-law No. 10 is confined only to the acts of individuals and cannot be construed to

mean cessation of membership with 5th respondent on account of amalgamation.

49. Though the bye-law No. 10 provides for cessation of membership and sub-clause (5) thereof specifying '*ceasing to be in the service of Andhra Bank*' as one of the circumstance, however the word '*Cease*' as used therein is not defined. In absence of a specific meaning being assigned, reference has to be made to the meaning as assigned in the dictionaries. The word '*Cease*' is defined in various legal dictionaries as under -

P. Ramanatha Aiyar's Advanced Law lexicon: "Cease": To put an end to; to stop doing. "To 'cease,' does not, necessarily, import an act of free will

Blacks Law Dictionary revised 4th Edition: Cease: To stop; to become extinct; to pass away; to come to an end. MacDonald v. Etna Indemnity Co., 90 Conn. 226, 96 A. 926, 927; Martin v. Gray, 193 Ark. 32, 97 S.W. 439, 441. Suspend or forfeit. Marks v. La Guardia, Sup., 31 N.Y.S.2d 336, 350. A cessation of activity. Huasteca Petroleum Co. v. Cia de Navegacao Lloyd Brasileiro, D.C.N.Y., 297 F. 318, 321; In re Simpson, 62 Cal.App. 549, 217 P. 789, 790.

Stroud's Judicial Dictionary, 5th Edition: Cease:

(1) "To 'cease,' does not, necessarily, import an act of free will.

The East India Company has 'ceased' to employ a military

force because it has no longer any necessity for its employment" (*per* Lord Chelmsford, *Walsh v. Secretary for India*, 10 H.L. Cas. 396).

- (2) "Ceased" is a strictly proper word to apply to the case where the entire thing has "ceased to be" – e.g. as used in the phrase "any road which hasceased to be a turnpike road" in s.13, Highways and Locomotives (Amendment) Act 1878 (c.77) (*Lancashire Justices v. Rochdale*, 8 App. Cas. 494 – and especially judgment of Lord Vramwell).

Therefore, the word 'Cease' in the expression 'ceased to be in service of Andhra Bank' as used in bye-law No.10(5) has to be construed to mean stoppage in services of a person, i.e., the member of 5th Respondent who is being granted membership of the 5th Respondent under Bye-Law No.6, deciding to put an end or stopping his employment with Andhra Bank on his own accord and cannot be taken in a sense to indicate the change in the status of Andhra Bank, more specifically when the services of the employees continue with the transferee Bank.

50. It is also important to note that the 5th respondent will continue to have nominal members who do not have voting rights but would not have members having voting rights, who can elect its Board to conduct its affairs, if the interpretation of the petitioner is to be

accepted. Further even to amend the bye-laws as being claimed by petitioner, it is necessary that the members having voting right continue their membership, as the nominal members do not have the right to participate in the General Body Meeting of 5th respondent.

51. Further, as noted above, since the 5th respondent has two categories of members, the affairs of 5th respondent need to be continued without jeopardizing the interests of other members, which cannot be undertaken/performed without having a proper Board in its place. Thus, the claim of petitioner that on account of amalgamation of Andhra Bank with Union Bank of India under the Scheme of 2020, all the members of 5th respondent cease their membership with 5th respondent thereby making the 5th respondent as Society without members, in my considered opinion, is a farfetched proposition to be accepted.

52. The reliance placed by the learned Senior Counsel appearing for petitioner on the decision of this Court in **State of A.P. and others Vs. Jindal Strips Limited**³ where the issue under

³ (2006) 73 APSTJ 1

consideration was that the sale of goods that took place between subsidiary company and respondent-company in the interregnum period between sanctioned date of amalgamation and factual date of amalgamation, was only transfer of stock of one branch to another, has no direct bearing on the issue involved in the present Writ Petition.

53. It is also to be seen that if the scheme of amalgamation does not get the approval of the Court, in such situation, the transaction between the amalgamating Company would be treated as an independent transaction though it took place between the sanction date and actual date of amalgamation.

54. Learned Senior Counsel appearing for petitioner also placed reliance on the decision of Full Bench of Kerala High Court in **Mathew Phillip and others Vs. Malayalam Plantations (India) Ltd and others**⁴. In the said judgment, the Full Bench of Kerala High Court has held that "the word 'amalgamation' is not defined in the Companies Act. Nevertheless, it is a word the implication of which can be comprehended without much strain. It means mixing

⁴ 1994(4) Comp.L.J 5 (Ker)

up or uniting together. The resultant position of amalgamation is not annihilation although the identity of the amalgamated unit would stand integrated with another. It is the organic unification of two entities or undertakings or the fusion of one with the other.”

55. A reading of the above indicates that upon amalgamation it cannot be said that the one loses its existence into other, on the otherhand, it connotes a meaning of mixing up or uniting together and thereby implying that both continue to work together under a different name. Therefore, the reliance placed by the learned Senior Counsel on the behalf the Petitioner is of little assistance to advance his case.

56. The Delhi High Court in the case of *Delhi Towers Ltd. Vs. G.N.C.T. of Delhi*⁵ had taken a similar view observing as under:

30. The nature of the proceedings for approval of a scheme of amalgamation under the Companies Act, 1956 are best described in a judgment of this Court reported at (1983) 53 Company Cases 926 (Delhi) In re: Telesound India Limited in the following terms:

12. ... Amalgamation is, therefore, an absorption of one company into another or merger of both to form a third, which is not a mere act of the two companies or their members but is

⁵ (2009) SCC Online Del 3959

brought about by virtue of a statutory instrument and to that extent has statutory genesis and character, and to that extent it is distinguishable from a mere bilateral arrangement to merge or join in a common endeavor, an undertaking or enterprise [J. K. (Bombay) P. Ltd. v. New Kaiser-i-Hind Spg. & Wvg. Co. Ltd. [1970] 40 Comp Case 689 (SC)]..... The rights, property, as indeed the liabilities of the transferor-company, become the rights, property and liabilities of the transferee-company by virtue of the order of vesting made by the court consequent on amalgamation. It is neither an assignment of right or property, nor an assignment of property by the company. It is the transfer of rights, property and liabilities along with the company itself and it is only as a result of confusion of thought that it could be described as an assignment by the company to another person, which is independent and distinct from the company. Such a notion ignores the peculiar position of amalgamation in company law and its true legal incident. **It is for historical reasons that the device of amalgamation was built into the company law for facilitating the merger of companies, inter alia, with a view to help restoration of sick units to health, better, more effective and economical management of the corporate sector to ensure continued production, increased employment avenues and generation of revenues.** Section 72A of the I.T. Act is one of the incentives for this kind of absorption of one company into another. **On amalgamation the transferor-company merges into the transferee- company shedding its corporate shell, but for all purposes remaining alive and thriving as part of the larger whole. In that sense the transferor company does not die either on amalgamation or on dissolution without winding-up under Sub- section (1) of Section 394. It is not**

wound up because it has merged into another. Winding-up is unnecessary. It is dissolved not because it has died, or ceased to exist, but because for all practical purposes, it has merged into another forming part of one corporate shell. The dissolution is the death of its independent corporate shell, because a company cannot have two shells. It is, therefore, dissolved because the independent shell or corporate name is superfluous. The company in its essence means its members, who compose it, the assets, property and rights that it had, its liabilities, its undertaking, business or other activity. It is not synonymous with the shell or name. On amalgamation and consequential dissolution all these attributes continue to live as part of a larger entity. The only part that dies is the shell and the name. It is unlike the death of a natural person and yet in a larger and deeper sense the same. It is unlike it, because a natural person, as ordinarily understood, does not survive the death in any physical form. The transferor-company, however, does survive, in that there is a continuity even after dissolution of its members, its assets, undertaking, etc...

175. So far as the submission that the question of the transfer has ceasing through exist upon effectuation of the scheme of amalgamation is concerned, this submission fails to take into consideration the impact of the amalgamation. This Court in re: Telesound India Limited (supra) and Hotline Hol Celdings Private Limited and Ors. (supra) has clearly held that upon giving effect to a scheme for amalgamation, there is no winding up of the transferor company. On the contrary, the effect is of absorption of one company into another or merger into a larger third. It has been compared to shelling of a corporate shell by the transferor company

which merges into the transferee company. For all practical purposes, the transferor company remains alive and thrive as part of the larger whole.

57. On the other hand, if by amalgamation, one loses its identity, no proceedings for recovery of dues including the statutory dues can be initiated against the transferor company as the transferor company ceases to exist. Such proposition, if accepted, would lead to anomaly resulting in loss of revenue, which is not the intention behind permitting amalgamation either under the Companies Act or under a policy decision of the Government like the Scheme of 2020.

58. Further, it is also to be noted that when a transferor company is amalgamated with a transferee company, the same would not wipe out or absolve its liabilities. This view has been held by the Hon'ble Supreme Court in **Principal Commissioner of Income Tax (Central) – 2 Vs. Mahagun Realtors (P) Ltd**⁶ by observing as under:

32. The combined effect, therefore, of Section 394(2) of the Companies Act, 1956, Section 2(1A) and various other provisions of the Income Tax Act, is that despite amalgamation, the business,

⁶ 2022 SCC Online 407

enterprise and undertaking of the transferee or amalgamated company which ceases to exist, after amalgamation, is treated as a continuing one, and any benefits, by way of carry forward of losses (of the transferor company), depreciation, etc., are allowed to the transferee. Therefore, unlike a winding up, there is no end to the enterprise, with the entity. The enterprise in the case of amalgamation, continues...

59. If the above ratio of the Hon'ble Supreme Court is taken into consideration, the mere amalgamation of Andhra Bank with Union Bank of India under Scheme of 2020 would not absolve Andhra Bank from discharging any of its liabilities towards statutory authorities or its employees including superannuated employees.

60. Further, as per Section 18(1) of the General Clauses Act, a transferee becomes the successor of a transferor, when the transferee expresses its relation to the transferor. Further Section 17 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 also states that any reference to the transferor bank in any law, or in any contract or other instrument shall, insofar as it relates to the undertaking which has been transferred shall be understood as a reference to the corresponding new bank. A reading of the above provisions with Clause 4 of the Scheme of 2020 which speaks of 'General Effect of Vesting'

makes it clear that by way of Amalgamation Union Bank of India being the transferee would become the Successor-In-interest of Andhra Bank i.e., transferor. Therefore, the contention of the Petitioner that by virtue of amalgamation the employment of a member of the 5th respondent with Andhra Bank would come to an end thereby the same would have to be construed as cessation of employment with Andhra Bank cannot be accepted as there is no stoppage in service. Rather the employee would continue to be in service with the successor Bank as per sub clause (13) and (14) of clause 4 of the Scheme of 2020.

61. Further, on the reliance placed on the provisions of Section 123 of Act by petitioner, it is to be seen that the provisions of Section 123 of the Act can only be invoked when there is stalemate in the conduct of affairs of a Society. As in the present case, there is no stalemate and by virtue of provisions of Section 45(5) of the Act R/w bye-law 33 of the bye-laws of 5th respondent, the existing body i.e., the Board of Directors can continue to hold their office till newly elected body assumes charge of their office. It cannot be

said that a stalemate has occurred requiring administration of 5th respondent to be placed in the hands of an administrator.

62. Since petitioner also claims to be an employee of erstwhile Andhra Bank, which got amalgamated with Union Bank of India under Scheme of 2020, even the petitioner loses his membership in 5th respondent and cannot maintain the present Writ Petition, if his contention is accepted. Moreover, the petitioner on one hand while exercising his right as a member by seeking issuance of nomination form to participate in the elections, cannot on the other hand claim that the 5th respondent has no members and the affairs need to be managed by appointing a person-in-charge. Such conduct of the Petitioner would show that he is adopting dual standards of approbate and reprobate, which is not permissible in law.

63. Thus, considering from any angle, the claim of petitioner in the present Writ Petition seeking for issuance of a Writ of Mandamus restraining the 4th respondent from proceeding further in terms of Election Notice dt.25-11-2020 by holding that the 5th respondent does not have members to hold its elections for electing its Board of Directors is without any substance and is devoid of

merits apart from lacking *bona fides* and the same is liable to be rejected.

64. Accordingly, the Writ Petition is dismissed with costs of Rs.5,000/- (Rupees Five Thousand only) to be paid to the High Court Legal Services Committee within a period of two (02) weeks from the date of receipt of a copy of this order.

65. Consequently, I.A.Nos.2 and 3 of 2021 are accordingly ordered.

66. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

MEMORANDUM OF COSTS

I.A.Nos.2 and 3 of 2021
In/and
W.P.NO.22515 OF 2020

Costs Quantified by Hon'ble Court (That the Petitioner herein is directed to pay costs of Rs.5,000/- (Rupees Five Thousand Only) to High Court Legal Services Committee, Hyderabad

Rs. Ps.

5,000-00

TOTAL

5,000-00

//TRUE COPY//

SD/-K.VENKAIAH
ASSISTANT REGISTRAR

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HIGH COURT

DATED:30/12/2022

ORDER

I.A.Nos.2 and 3 of 2021
In/and
WP.No.22515 of 2020



ORDERING THE IAs 2 & 3 of 2021 &
DISMISSING THE WRIT PETITION
WITH COSTS

21
MMA
21/1/2023